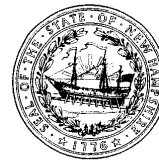




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

August 28, 2006

Gary Bardsley
269 Eastman Hill Road
Sanbornton, NH 03269

Peter + Gary, LLC
6 Checkerberry Lane
Concord, NH 03301

Re: Docket No. AF 05-093 – Motion to Accept Settlement Agreement

Dear Mr. Bardsley:

Enclosed for your records is a copy of the fully executed and accepted Motion to Accept Settlement Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael P. Sclafani
Legal Assistant

cc: Michael J. Walls, DES Assistant Commissioner
Harry T. Stewart, P.E., Director, Water Division
Jennifer J. Patterson, NH DOJ
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
Linda Magoon, DES WD

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095
Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964
DES Web site: www.des.nh.gov

Gary Bardsley
269 Eastman Hill Road
Sanbornton, NH 03269

Peter + Gary, LLC
6 Checkerberry Lane
Concord, NH 03301

Re: Holderness Road, Sandwich Tax Map 22
Lot 13, Program File #2005-0101

ADMINISTRATIVE FINE

No. AF 05-093

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Water Division ("the Division"), Gary Bardsley and Peter + Gary, LLC ("P+G"), parties to the above-captioned matter, and stipulate to the following:

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* (the "Wetland Rules") to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. P+G is the owner of property located on Holderness Road in Sandwich, NH, more particularly described as Lot 13 on Sandwich Tax Map 22 ("Property"). Peter McGrath is the registered agent and manager of P+G, according to records maintained by the New Hampshire Office of the Secretary of State.
4. On December 12, 2004, P+G filed a *Notice of Intent to Cut Wood or Timber* on the Property with the Town of Sandwich. The Notice of Intent lists P+G as the Property owner and Gary Bardsley as the logger responsible for logging. Gary Bardsley signed the Notice of Intent as the logger for P+G. Peter McGrath signed the Notice of Intent as the Property owner and Manager of P+G.
5. On January 10, 2005, the Division received a *Notification of Forest Management or Timber Harvest Activities Having Minimum Wetlands Impact* (the "Notification") regarding the Property dated January 4, 2005. The Notification lists P+G as the Property owner and Gary Bardsley as the logger responsible for logging. Gary Bardsley signed the Notification as the Property owner.

6. On November 7, 2005, the Division issued Notice of Proposed Administrative Fine and Hearing No. AF 05-093 (the "Notice") to Gary Bardsley and P+G seeking fines totaling \$8,500 for violations of RSA 482-A and the Wetland Rules.

7. Specifically, the Notice cited Respondents for violating RSA 482-A:3, I, by diverting more than 300 linear feet of stream channel without a permit from DES. Pursuant to Env-C 614.05(c), the Division sought a fine of \$2,000.

8. The Notice also cited Respondents for violating NH Admin. Rule Wt 304.05(c) by failing to comply with timber harvesting best management practices, or more specifically by: (a) failing to use erosion controls on the Property; (b) failing to remove a poled ford after use; and (c) failing to correctly install a poled ford by placing the crossing perpendicular, rather than parallel, to the stream. Pursuant to Env-C 614.06(f), the Division sought a fine of \$2,000 per violation of Wt 304.05(c), or a fine of \$6,000 for the three violations alleged.

9. The Notice also cited Respondents for violating RSA 482-A:3, I, by filling approximately 250 square feet of wetland without a permit from DES. Pursuant to Env-C614.02(a), the Division sought a fine of \$500.

10. In order to settle this matter, the Division and Respondents have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

11. Of the proposed fine, in the amount of \$8,500, the Division agrees to suspend 25%, or \$2,125 contingent upon the Respondents remaining in compliance with the statutes, rules, and permits under the purview of DES, including the Wetland Rules, for a period of two years from the date of the execution of this Agreement. If one, or both, Respondents fail to maintain compliance during the two-year period, the suspended portion of the fine, in the amount of \$2,125 shall become due and payable immediately. If Respondents maintain compliance with the rules and training requirements for the prescribed two-year period, the suspended portion of the fine shall be waived.

12. Respondents agree to pay the remaining \$6,375 on or before August 31, 2006.

13. Payment under Paragraph #12 and any payment that becomes due pursuant to Paragraph #11 shall be paid by certified or corporate check made payable to: "Treasurer, State of New Hampshire" and mailed to:

Department of Environmental Services - Legal Unit
Attn: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

14. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

15. By executing this Agreement, Respondents waive their right to a hearing on or any appeal of the administrative fines identified in the Notice, and agree that this Agreement may be entered into and enforced by a court of competent jurisdiction.

16. The effective date of this Agreement will be the date on which it is signed by Gary Bardsley, Peter McGrath for P+G, the Director of the Water Division, and accepted by the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by all parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

17. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

Peter + Gary, LLC

COPY

Date

8/16/06

By: Peter G. McGrath
Duly Authorized

Date

8/16/06

COPY

Gary Bardsley

DES Water Division

COPY

Date

8/23/06

Harry T. Stewart, P.E., Director

This Motion to Accept Settlement agreement is granted this 23rd day of August, 2006.

COPY

Michael P. Mohn, Commissioner

Department of Environmental Services